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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**WESTERN DIVISION**

11 HAROLD KESSEE, ) Case No. CV 06-3740-PSG (MLG)  
12 Petitioner, )  
13 v. ) ORDER DENYING PETITION FOR WRIT  
14 ) OF HABEAS CORPUS FOLLOWING REMAND  
15 KATHY MENDOZA POWERS, Warden, )  
16 Respondent. )  
17

18 This matter is before the court on a Petition for Writ of Habeas  
19 Corpus filed pursuant to 28 U.S.C. § 2254, following reversal by the  
20 United States Court of Appeals for the Ninth Circuit. *Kessee v.*  
21 *Mendoza-Powers*, 569 F.3d 1000 (9th Cir. 2009), amended 2009 WL  
22 2170081 (July 22, 2009). In an order and judgment entered July 7,  
23 2007, this Court adopted the April 27, 2007 Report and Recommendation  
24 of United States Magistrate Judge Marc L. Goldman, which concluded  
25 that the petition should be granted because the trial court's  
26 imposition of an upper term sentence violated the mandate of  
27 *Cunningham v. California*, 549 U.S. 270 (2007).

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1 In reversing this decision the Ninth Circuit disagreed. The  
2 Court reversed and remanded "with instructions to deny the writ of  
3 habeas corpus." Accordingly, it is ordered that judgment be entered  
4 denying the petition with prejudice.

6 | Dated: August 13, 2009

*Phil S. Smith*

Philip S. Gutierrez  
United States District Judge

12 || Presented by:



Marc L. Goldman  
United States Magistrate Judge